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Independence of judges and lawyers

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, submitted in accordance with Human Rights Council resolution 35/11.

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Report of the Special Rapporteur on the independence of judges and lawyers

Summary

The Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, has devoted the present report, the first that he is submitting to the General Assembly, to the issue of organized crime and its impact on the justice system. Owing to the substantial threat that judicial corruption linked to organized crime poses for the independence and impartiality of the judiciary, the Special Rapporteur has identified this issue as one of the topics that he will address during his mandate.

Following a summary of the activities carried out under this mandate since January 2017, the focus of the report is on the link between organized crime and judicial corruption, the threats generated thereby and, in turn, the challenges posed to justice systems and the legal professions. The Special Rapporteur emphasizes the vital importance of the United Nations Convention against Corruption and the fact that, as a key tool for addressing corruption, the Convention should also be considered a basic international instrument for protecting human rights.

In particular, the report seeks to identify (a) the causes and factors that generate judicial corruption through organized crime; (b) the extent of corruption and its impact on the judiciary and society as a whole; and (c) the main modalities and tactics used by organized crime. On the basis of this analysis, the Special Rapporteur identifies a number of good practices to prevent and combat corruption related to organized crime and concludes the report with a list of recommendations.

Report of the Special Rapporteur on the independence of judges and lawyers

I. Introduction

1. The present report is submitted in accordance with Human Rights Council resolution 35/11. This is the first report to the General Assembly by the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, since his appointment in December 2016.

2. This report contains an analysis of the issue of organized crime and its impact on the judicial system. The Special Rapporteur has identified this issue as one of the main topics that he will address during the course of his tenure (A/HRC/35/31, para. 109). The report draws on developments in international law in this field and on the work of his predecessors in the study of judicial corruption (see, in particular, A/67/305).

3. In writing this report, the Special Rapporteur called for contributions from States, United Nations agencies, professional associations of judges, lawyers and prosecutors, and civil society. The Special Rapporteur requested contributions relating to: cases in which the independence of lawyers and judges had been affected by corruption or by organized crime activities, and how those cases were addressed; the measures, already taken or planned, to protect judges and lawyers against corruption and the influence of organized crime; the measures designed to make legal professionals accountable for acts of corruption, when there is substantial and prima facie evidence that they may have committed them; and measures designed to strengthen the capacity of judges and lawyers to combat corruption and organized crime.

4. At the time of writing the present report, the Special Rapporteur has received a total of 23 responses (16 countries and 7 organizations). The Special Rapporteur wishes to convey his sincerest gratitude to all States[1] and non-governmental organizations[2] that have provided contributions for the preparation of this report. These contributions can be found on the website of the Office of the United Nations High Commissioner for Human Rights.

5. The Special Rapporteur would like to thank the Human Rights Clinic of the University of Ottawa Human Rights Research and Education Centre for its outstanding work to support the research for and drafting of this report.

II. Activities since January 2017

6. Following the resignation of Mónica Pinto, Diego García-Sayán was appointed Special Rapporteur in December 2016. Subsequently, his mandate was extended on 19 June 2017 for a period of three years by Human Rights Council resolution 35/11.

[1] Azerbaijan, Bosnia and Herzegovina, Colombia, Cuba, El Salvador, Estonia, Germany, Honduras, Hungary, Japan, Mexico, Montenegro, Russian Federation, Senegal, Sweden and Turkey.

[2] Asociación de Jueces por la Democracia (Honduras), Centre Africain de Recherche Interdisciplinaire, Corporación Fondo de Solidaridad con los Jueces Colombianos (Colombia), Lawyer Tunisia, At-sik-hata: Nation of: Yamassee-Moors, UIA — International Association of Lawyers, International Bar Association, Asociación Guatemalteca de Jueces por la Integridad, Instituto de la Judicatura, Impunity Watch and Plataforma Internacional contra la Impunidad (Guatemala).

Since January 2017, the Special Rapporteur has participated in various activities, some of which are referred to below.

A. Country visits

7. The Special Rapporteur has sent requests for official visits to Cameroon, Honduras, Jordan, Lebanon, Morocco, Poland and Turkey. The Special Rapporteur appreciates the positive responses received from the Governments of Morocco and Poland. He also appreciates the invitation extended to him by Algeria during the interactive dialogue held on 12 June 2017 during the thirty-fifth session of the Human Rights Council.

B. Communications and press releases

8. From January to mid-July 2017, the Special Rapporteur sent 18 communications, including 10 urgent appeals and 6 letters of allegation. A total of 17 of these communications were sent jointly with other special procedures mandate holders. These communications, together with the replies from the Governments to which they were addressed, are published on a regular basis in the communications reports of special procedures mandate holders.

9. Together with other special procedures mandate holders, the Special Rapporteur published a press release on 13 February 2017 to encourage the constitutional reform currently taking place in Guatemala.[3] In this communication, the Special Rapporteur emphasized the need to strengthen access to justice. The Special Rapporteur also highlighted the urgent need to establish impartial mechanisms for the selection of justice professionals, and the importance of safeguarding the independence and impartiality of the judiciary.

10. On 30 June 2017, the Special Rapporteur issued a press release concerning the decision of the Supreme Court of the Bolivarian Republic of Venezuela to freeze the assets of Attorney-General Luisa Ortega Diaz and to prohibit her from leaving the country.[4] In particular, the Special Rapporteur expressed his opposition to all measures, including the threat to prosecute her, that would interfere with the duties of the Attorney-General in Venezuela and would affect the democratic functioning of Venezuelan institutions.

C. Other activities

11. From 14 to 16 March 2017, the Special Rapporteur took part in a series of meetings and consultations in Geneva.

12. On 16 March 2017, the Special Rapporteur organized an informal consultation with civil society representatives, including associations of legal professionals and State representatives, to explain his work strategy for the future and to take note of their observations and suggestions for possible future activities under his mandate.

13. On the same day, in the context of the thirty-fourth session of the Human Rights Council, the Special Rapporteur took part in a side event entitled "Lawyers at risk", organized by the Law Society of England and Wales, together with Lawyers for Lawyers. At this event, the Special Rapporteur presented the thematic work carried out by his predecessors and highlighted the core conceptual elements of his mandate.

[3] See www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=21167&LangID=S.

[4] See http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21818&LangID=E.

14. Also on 12 June 2017, the Special Rapporteur presented his first annual report at the thirty-fifth session of the Human Rights Council (A/HRC/35/31). In that report, the Special Rapporteur presented his perspective on his mandate and identified a number of topical issues that he will have the opportunity to address during his mandate. He also introduced the report of his predecessor on her official visit to Sri Lanka, which took place from 29 April to 7 May 2016 (A/HRC/35/31/Add.1).

15. Also on 12 June, the Special Rapporteur took part as a panellist in the public event "Independence of the Judiciary: Why Parliaments should care", which took place at the Graduate Institute of International and Development Studies in Geneva. This event was organized by the International Development Law Organization and the Inter-Parliamentary Union, with support from the Governments of Italy, Japan, Mexico and the United Kingdom.

16. From 27 to 30 June 2017, the Special Rapporteur took part in the annual meeting of special rapporteurs and representatives, experts and chairs of working groups of the special procedures.

17. On 12 July 2017, the Special Rapporteur took part in a debate and analysis concerning the independence of judges and lawyers in Turkey, organized by the American Bar Association, contributing his ideas on current international standards in that area.

III. Organized crime and judicial corruption

A. Introduction

18. Corruption has a direct impact on the defence of human rights. First, it deprives societies of significant resources that could be used to meet basic needs in public health, education, infrastructure or security.[5] Second, it has direct negative consequences for the functioning of State institutions, in general, and for those organs responsible for ensuring the rule of law and the administration of justice, in particular.

19. At the global level, the economic losses caused by transnational crime amount to 1.5 per cent of global GDP and close to 7 per cent of the world's merchandise exports.[6] In disaggregated terms, drug trafficking accounts for $320 billion, human trafficking for $32 billion, illegal trafficking in firearms for between $170 billion and $320 billion and cybercrime for almost $1 billion.

20. In 2000, the United Nations General Assembly adopted the Millennium Declaration (by its resolution 55/2), in which Member States resolved to intensify their efforts to fight transnational crime in all its dimensions. In the 2005 World Summit Outcome Member States expressed their "grave concern at the negative effects on development, peace and security and human rights posed by transnational crime, including the smuggling of and trafficking in human beings, the world narcotic drug problem and the illicit trade in small arms and light weapons, and at the increasing vulnerability of States to such crime" (General Assembly resolution 60/1, para. 111).

[5] According to the Organization for Economic Cooperation and Development and other sources, losses due to corruption are equivalent to more than 5 per cent of global GDP, with more than $1 trillion paid in bribes each year (see www.oecd.org/cleangovbiz/49693613.pdf).

[6] See www.unodc.org/toc/en/crimes/organized-crime.html.

21. In his first report to the Human Rights Council, the Special Rapporteur emphasized that corruption and organized crime are undermining the rule of law and the capacity of States to promote systems of governance accountable to and compliant with human rights standards. Corruption also undermines the ability of the judiciary to guarantee the protection of human rights and directly or indirectly impedes the discharge of the professional functions of judges, prosecutors, lawyers and other legal professionals. Corruption also has a devastating effect on the entire judicial system, as it diminishes the confidence of citizens in the administration of justice (A/HRC/35/31, para. 115).

22. Since the establishment of the mandate, the Special Rapporteurs have expressed their concern at the adverse impact of corruption on the judiciary and on legal professionals. The Special Rapporteur acknowledges the important work carried out by his predecessors on how corruption threatens the very essence of the independence of magistrates and lawyers, and on the identification of measures to counter this problem (see A/64/181, A/65/274, A/67/305 and A/70/263; A/HRC/4/25, A/HRC/11/41 and A/HRC/20/19; E/CN.4/1996/37, E/CN.4/2000/61, E/CN.4/2001/65 and E/CN.4/2002/72/Add.1).

23. In this report, the Special Rapporteur takes into account the analyses and conclusions set out in previous reports, which he fully endorses, and he focuses on the link between organized crime and judicial corruption, the threats generated by that link and, in turn, the challenges it poses for justice systems and for the legal profession, taking into account the international instruments against corruption and against organized crime. In particular, he seeks to identify (a) the causes and factors that generate judicial corruption through organized crime; (b) the extent of corruption and its impact on the judiciary and on society as a whole; and (c) the main schemes or tactics used by organized crime. On the basis of this analysis, the Special Rapporteur identifies a number of good practices for preventing and combating corruption linked to organized crime.

24. There are numerous international, regional and national reports, initiatives and public policies designed to prevent or combat organized crime and corruption. Few of them, however, have focused on the link between the two phenomena.[7] Organized crime and corruption have been addressed at the international level through two different conventions: the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption.

25. The United Nations Convention against Transnational Organized Crime and the three Protocols thereto are the main legal instrument for combating organized crime.[8] Their purpose is to promote national, regional and international cooperation with a view to prosecuting or addressing organized crime activities when they occur, and to prevent and combat their harmful socioeconomic effects (art. 1).

26. Several provisions of the Convention recognize the link between organized crime and corruption, for example, article 8, in which States are urged to take measures to criminalize corruption, and article 9, in which States are urged to adopt

[7] See, for example, E. Buscaglia and J. van Dijk, "Controlling organized crime and corruption in the public sector", *Forum on Crime and Society*, vol. 3, Nos. 1 y 2, December 2003 (United Nations publication, Sales No. E.04.IV.5), pp. 3-34.

[8] Adopted by the General Assembly pursuant to resolution 55/25 of 15 November 2000, the United Nations Convention against Transnational Organized Crime entered into force on 29 September 2003. On 25 June 2017, the Convention had 187 States parties. There are three Protocols to the Convention, which address three types of organized crime: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; Protocol against the Smuggling of Migrants by Land, Sea and Air; and Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.

legislative, administrative or other measures to prevent, detect and punish corruption. After its adoption, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime, was desirable and decided to begin the elaboration of such an instrument (see General Assembly resolution 55/61, paras. 1 and 2).

27. The United Nations Convention against Corruption is the only universal instrument against corruption and is one of the international treaties with the most States parties.[9] In the preamble to the Convention, States parties express concern "about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering". After its adoption, the then Secretary-General of the United Nations, Kofi Annan, reiterated with concern that corruption affects all countries, "big and small, rich and poor", and that corruption "undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organized crime, terrorism and other threats to human security to flourish".[10]

28. The Convention identifies the judiciary as an institution that is critical in preventing and combating corruption. In particular, article 11 provides that each State party should take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary, without prejudice to judicial independence. Such measures may be introduced and applied within the prosecution service in States where that institution does not form part of the judiciary but enjoys independence similar to that of the judicial service.

29. The broad scope and the mandatory nature of the Convention make it the only instrument capable of providing a comprehensive response to a global problem. It covers a number of fundamental and progressive issues and provides clear and concrete tools that make it possible for a number of States to make progress in simultaneous and joint criminal investigations. As it is a key tool to address corruption, this Convention should be also be seen as a fundamental international instrument for the protection of human rights, and it therefore warrants continued attention from the relevant competent bodies.

B. Organized crime or organized criminal group

30. The United Nations Convention against Transnational Organized Crime does not contain a precise definition of "transnational organized crime" or list the types of offences covered by the term. The lack of a definition makes the Convention a valid instrument with enough flexibility to take into account new realities that emerge as criminal groups develop and adapt their activities to the circumstances around them.

31. The Convention provides only a broad definition, in article 2, of what should be understood by "organized criminal group":[11] a "structured" group that is not randomly formed, exists for a period of time and aims to carry out criminal

[9] Adopted by the General Assembly pursuant to resolution 58/4 of 31 October 2003, the United Nations Convention against Corruption entered into force on 14 December 2005. On 25 June 2017, the Convention had 181 States parties.

[10] United Nations Office on Drugs and Crime, United Nations Convention against Corruption, New York, 2004, p. iii.

[11] According to article 2 (a) of the Convention, "organized criminal group" means "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

activities. For an entity to be considered an "organized criminal group", the purpose of its activities must be to obtain "any property derived from or obtained, directly or indirectly, through the commission of an offence" (article 2 (e)).[12]

32. The United Nations Convention against Transnational Organized Crime covers only "transnational" offences. That term covers both offences committed in more than one State and offences committed by organizations operating in more than one country. Criminal activities that do not fall within those categories but have an impact in another State are also considered transnational.

33. The most common types of organized crime are set out in the three protocols supplementing the Convention.[13] Organized criminal groups may be involved in activities such as international adoption of children, trafficking in children or trafficking in illicit drugs, exotic animals or plants, firearms, human organs or stolen goods, or gambling, money-laundering, sexual exploitation or child pornography.

1. Definition of organized crime for the purposes of this report

34. Several academics have developed different definitions of the term "organized crime". Some focus on the structure and characteristics of organized criminal groups, while others concentrate on the type of criminal activities carried out by such groups. A common element of all of these definitions seems to be that they describe "organized crime" in terms of groups and their characteristics. However, the phenomenon cannot be defined solely in terms of crimes; any definition must incorporate and take into account the term "organized", given that a simple list of crimes does not tell us much about organized crime.

35. The Special Rapporteur believes that any attempt to define the phenomenon must be sufficiently broad, focus on the main characteristics of organized crime and identify the range of criminal activities and social phenomena that organized crime comprises. Consequently, the Special Rapporteur considers that organized crime exists when:

(a) Activities are carried out over a sustained period, as opposed to being executed by individuals who come together from time to time to carry out a specific action;

(b) Organizations have an identifiable structure and hierarchy, which may take various forms: pyramidal, corporate, public or private, among others;

(c) Organizations commit serious crimes in order to make a profit;

(d) Criminal organizations use corruption or violence to carry out their activities and protect themselves from the consequences.

36. The terms "organized crime" and "organized criminal group" are used synonymously in this report. Furthermore, the term "organized crime" is used to refer to both transnational crime and the activities of organized groups in a single territory. The distinction between transnational and domestic organized crime, which may have made sense some decades ago, has become irrelevant as a result of

[12] According to the United Nations Office on Drugs and Crime, "The definition of 'organized criminal group' does not include groups that do not seek to obtain any 'financial or other material benefit.'" Therefore, terrorist or insurgent groups whose goals are non-material fall outside the scope of the Convention. However, the Convention may still apply to crimes committed by terrorist or other groups in the event that they commit crimes covered by the Convention (United Nations Office on Drugs and Crime, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.05.V.2), p. 13, para. 26).

[13] See footnote 8 above.

globalization and technological developments that have made it possible to carry out illicit acts from anywhere in the world.

2. Common elements of organized crime

37. Elements that help to identify organized crime include the collaboration of three or more persons in criminal acts; a motive of profit or power; corruption; money-laundering; a corporate structure; the use of violence and intimidation; international activity; specialization; continuity and discipline; and control over members of the group.

38. Transnationality, which is a direct consequence of the globalization process, greatly complicates efforts to combat organized crime and to coordinate among different States and bodies on the matter. Criminal organizations can currently operate with the same solvency as transnational companies, be linked to such companies or even compete for a segment of the market.[14]

39. Criminal networks attempt to extend their reach into the democratic legal system, imposing their power and influence on the basis of their own rules, thereby creating spheres of immunity and impunity within the State system itself. An important element of their organization is the penetration of institutions in the justice sector, in particular by using corruption as a means of gaining access to the judicial administration.[15] All of this creates an enormous challenge for judicial systems, which may be affected by corruption and threats while also bearing a fundamental responsibility to combat such crime.

C. Impact of organized crime and corruption in judicial systems

40. Judicial corruption weakens the administration of justice. Its existence at any stage of the judicial process presents a substantial impediment to an individual's right to a fair trial and severely undermines the public's confidence in the judiciary (A/67/305, paras. 32 and 33). Individuals working for the judicial system are targets for criminal groups, which attempt to interfere with their independence and impartiality in order to obtain impunity or legitimacy for their criminal activities.

41. Evidence of corruption in the judiciaries of many countries has been consistently growing in recent decades. According to a global survey of 95 countries carried out by Transparency International in 2013,[16] the judiciary is perceived to be the second most corrupt institution, after the police. Corruption among professionals in the judicial system and the prosecution service can be particularly damaging to the rule of law in countries going through a process of institutional reform or consolidation.

42. Participants in 20 countries rated the judiciary as the most corrupt institution: an average of 30 per cent reported having paid some type of bribe to a member of the judiciary.[17] Corruption among professionals in the judicial system and the

[14] C. Arroyo Borgen, "Una revisión conceptual del crimen organizado y sus tendencias en América Latina", *Mirador de Seguridad: Boletín informativo del Instituto de Estudios Estratégicos y Políticas Públicas. Crimen organizado. Conceptos, prácticas e implicaciones* (April to June 2007), p. 14.

[15] Republic of Costa Rica, Judiciary, Secretariat-General of the Court, Extraordinary Session of the Plenary Court, Act No. 041 of 25 August 2014, article XXIV, "Informe de la Comisión creada para investigar la penetración del crimen organizado y del narcotráfico en el Poder Judicial", p. 226.

[16] Transparency International, *Global Corruption Barometer 2013*, p. 11.

[17] Ibid., p. 17.

prosecution service can be particularly damaging to the rule of law in countries going through a process of institutional reform or consolidation.

43. While corruption tends to be more prevalent in countries where the rule of law is weaker, undue influence exists in the judicial systems of every type of country. Some countries have recognized the challenge of corruption and have begun to take action to combat it. According to the contributions received for this report, several States have convicted judges in corruption cases,[18] and others have conducted disciplinary proceedings and taken steps to dismiss, transfer and/or change the category of judges and other officials linked to corruption.[19]

44. A number of countries reported that they had used other tools, in addition to criminal investigations and disciplinary proceedings, in their efforts to combat corruption. For example, some countries stated that they had mechanisms in place through which individuals could make complaints against the judiciary,[20] a number of countries mentioned some type of anti-corruption education programme for judges and/or lawyers,[21] and others had established codes of conduct of some kind for judges, a number of which directly addressed the issue of corruption.[22]

45. Most studies on corruption provide little data concerning the impact of corruption on the independence and integrity of the judiciary or the nature of corruption and the extent of its links to organized crime. There were only two studies linking corruption in general to organized crime that the Special Rapporteur could take into consideration when drafting this report, both of which concerned the European Union.[23] The lack of reliable and concrete information concerning the influence of organized crime on the independence of the judicial system highlights the need to pay specific attention to this topic in order to identify the means by which criminal organizations attempt to influence the independence and impartiality of judges and other judicial system officials.

1. Concept of judicial corruption

46. The terms "corruption" and "judicial corruption" have not been defined in any legal instrument adopted at the international level. In her report to the Human Rights Council on this topic, Special Rapporteur on the independence of judges and lawyers Gabriela Knaul used the definition developed by Transparency International: "the abuse of entrusted power for private gain" (A/67/305, para. 16). A recent study defines judicial corruption as "all forms of inappropriate influence that may damage the impartiality of justice and may involve any actor within the justice system, including, but not limited to, judges, lawyers, administrative Court

[18] Three judges were convicted of bribery in Estonia between 2007 and 2017. Judges were also convicted in corruption cases in Bosnia and Herzegovina (one judge), El Salvador (three judges) and Hungary (two judges).

[19] Azerbaijan, Bosnia and Herzegovina and El Salvador. According to the information provided by Bosnia and Herzegovina, the change of category of the public prosecutor was due to links to organized crime.

[20] Bosnia and Herzegovina (High Judicial Prosecutorial Council), Colombia (Sectional Council of the Judiciary) and Honduras (Inspectorate-General of Courts).

[21] Azerbaijan, Bosnia and Herzegovina, El Salvador, Germany, Japan, Montenegro, Sweden and Turkey.

[22] Azerbaijan, Bosnia and Herzegovina, Colombia, Cuba, Honduras, Montenegro and Sweden.

[23] Eurobarometer (2006), *Opinions on organised, cross-border crime and corruption*, Special Eurobarometer 245; Center for the Study of Democracy, *Examining the Links between Organised Crime and Corruption*, Sofia, 2010.

support staff, parties and public servants."[24] A 2007 study by the Due Process of Law Foundation emphasizes that the objective of the conduct of a corrupt judge or judiciary employee is "to obtain an undue and illegal benefit for himself or herself or for a third party."[25] The present report takes into consideration these definitions in order to analyse the negative impact of organized crime corruption networks on the independence and impartiality of the judiciary.

47. This report covers only "judicial corruption", which is understood to mean any action intended to influence the impartiality and independence of judges and other actors involved in the administration of justice, including prosecutors, judiciary staff and jurors. The report does not take lawyers into consideration, except in cases where they serve as intermediaries for criminal organizations.

2. The link between politics, organized crime and judicial corruption

48. Political corruption has become an important tool for criminal groups, as its broad scope of action enables them to influence practically every area of the State administration, including the judiciary. Through its links to politics, organized crime seeks to conceal its illicit activities in order to be able to carry them out without having to face any consequences. From their position of power, corrupt politicians are able to act as intermediaries for organized crime in order to conceal illicit activities from which criminal groups are sure to profit.

49. Organized crime has become increasingly dependent on politics to be able to carry out its criminal activities.[26] Politics has become an essential tool to enable these criminal groups to carry out their actions effectively, with corruption being established as the nexus between the two groups. This way of operating enables organized criminal groups to penetrate the judiciary.

50. Politicians and State officials are therefore the primary targets of these corrupt networks, as they have the capacity to influence the outcome of activities carried out by organized crime. If organized crime is able to influence politicians and civil servants, there is obviously less risk of legal action being taken against its activities.

51. In light of the above, it is easy to understand why judiciary staff are a priority target for criminal organizations. The judicial system is an essential link for the successful execution of the activities of organized crime. Judges, magistrates and lawyers constitute the filter through which the activities of these organizations come to be deemed legal or otherwise according to the rule of law.

52. The link between corruption in general and judicial corruption is clear: in countries where political corruption is generally very widespread, the judicial system is likewise perceived to be very corrupt. Nevertheless, surveys indicate that,

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[24] International Bar Association, *The International Bar Association Judicial Integrity Initiative: Judicial Systems and Corruption*, May 2016, p. 12 (which cites S. Gloppen, "Courts, corruption and judicial independence", in T. Soreide and A. Williams (eds.), *Corruption, Grabbing and Development: Real World Challenges*, Cheltenham and Northampton (MA), Edward Elgar, 2014).

[25] Due Process of Law Foundation, *Controles y descontroles de la corrupción judicial. Evaluación de la corrupción judicial y de los mecanismos para combatirla en Centroamérica y Panamá*, Washington, D.C., 2007, p. 7.

[26] Office of the United Nations High Commissioner for Human Rights, The negative impact of corruption on the enjoyment of Human Rights; J. E. Alt y D. D. Lassen, "Political and judicial checks on corruption: evidence from American State governments", Economics and Politics, vol. 20, No. 1 (2008), pp. 33-61.

on average, levels of corruption in the judiciary are perceived to be lower than in other branches of public administration.[27]

53. However, perceived levels of corruption can vary significantly and are not necessarily indicative of actual levels of corruption.[28]

3. Types of judicial corruption caused by criminal organizations

54. The two types of corruption that most often affect judiciaries are political interference in judicial processes, by either the executive branch or the legislative branch of Government, and bribery.[29]

55. Political influence over the courts is a key element of judicial corruption, in particular in countries with high levels of political corruption. Decision-making processes become compromised when judges face potential reprisals, such as losing their post or being transferred to a remote area, if they hand down unpopular judgments. Undue influence and interference can take various forms. In some countries, criminal groups can exercise undue influence over the judiciary through closed, informal networks, such as social or professional networks.

56. In other countries, in particular those in which the links between organized crime and political groups are closer, interference with the judiciary may be more direct. For example, it may be effected through appointment processes or the administration of financial resources allocated to the administration of justice. In countries where judges are nominated by popular vote or where appointment processes are controlled by the Government, judges may be willing to compromise their decision-making voluntarily in order to gain political support. The political patronage through which a judge may receive an appointment, a promotion, an extension of employment, preferential treatment or the promise of employment upon completion of his or her mandate can lead to corruption. In some countries, political patronage may create a vertical system of corruption from high-level judges to local judges. In others, politicians, magistrates and members of criminal organizations form closed corruption networks that are not necessarily systematic in nature.[30]

57. Undue interference in the judiciary may also be of a violent nature, in particular when it comes directly from members of organized criminal groups. Such interference is intended to secure specific outcomes, such as the dropping of a particular case or the acquittal of a specific individual. It is frequently accompanied by threats, intimidation and/or extortion.[31]

58. A bribe may take the form of a promise to give a judge, prosecutor or administrative employee an undue advantage, directly or indirectly, for the employee in question or for another person or entity, if the employee carries out, or refrains from carrying out, a specific act in the exercise of his or her official duties.[32] Bribery in the form of cash, gifts or hospitality, including sexual favours, dining, entertainment and holidays abroad are direct forms of judicial corruption (A/67/305, para. 23). In countries where the political and governmental systems are strongly influenced by organized crime, the most prevalent forms of corruption are

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[27] International Bar Association, *The International Bar Association Judicial Integrity Initiative ...* (see footnote 24 above), p. 15.

[28] Ibid., pp. 15-16.

[29] Transparency International, *Global Corruption Report 2007: Corruption and Judicial Systems*, Buenos Aires, Del Puerto, 2007, p. XV.

[30] Center for the Study of Democracy, *Examining the Links between Organised Crime and Corruption* (see footnote 23 above), p. 13.

[31] International Bar Association, *The International Bar Association Judicial Integrity Initiative ...* (see footnote 24 above), p. 25.

[32] Ibid., p. 11 (which in turn cites article 15 of the United Nations Convention against Corruption).

heavy-handed extortion and bribery, often accompanied by threats of violence if the request is not met.[33]

59. The incidence of corruption through bribery varies from country to country.[34] In countries where corruption is widespread and affects all State institutions equally, the payment of bribes to members of the judiciary is the norm and may even be necessary in order to obtain any type of service.

60. There are various ways in which judges and other actors in the judicial system may participate or be complicit in corrupt transactions. Individual judges, for instance, may accept or solicit bribes in exchange for influencing the outcome of a case or providing access to legal services that would not otherwise be offered. Prosecutors may request bribes or be subject to external pressure to delay or accelerate legal proceedings. Lawyers may request "additional fees" in order to further the interests of their clients by bribing other legal professionals. In many countries, court staff are often poorly remunerated, or at least paid significantly less than judges and lawyers, which increases the incentive to engage in this type of unethical conduct. For example, court officials may request money in exchange for intentionally misplacing or altering court records, influencing the administration of a case or providing access to court decisions before they are made public.

4. Elements of judicial corruption

61. Corruption within the judicial system has a substantial impact on the work of other State institutions, and can even lead to impunity for crimes committed (A/65/274, para. 44). It may also concern administration within the judiciary (lack of transparency, system of bribes) or take the form of biased participation in trials and judgements as a result of the politicization of the judiciary, the party loyalties of judges or all types of judicial patronage (E/CN.4/2004/60, para. 39).

62. The literature that addresses judicial corruption shows how structural complexity and a lack of transparency can increase the risk of corruption with regard to concealing or abetting corrupt behaviour. For example, complex procedures can be used by personnel involved in the administration of justice who interact with the public to obtain bribes in exchange for expediting the services they provide. Similarly, vague or convoluted penalty processes and regimes can lead to impunity for influential individuals.[35]

63. In order to facilitate a theoretical understanding of the elements that make up judicial corruption, the Special Rapporteur has divided the former into two categories, subjective and objective. Subjective elements are understood to be at play when "the origins or sources of political corruption in civil servants in the judicial sphere as exercised by organized crime groups are eminently personal and specific to individual employees or judicial officers".[36] While the rulings issued by such bodies must be legally motivated, there remains a margin of discretion within which judges may play a decisive role.

64. Objective elements do not stem internally from the subjective sphere of judicial officers but from the context in which the latter perform their duties. Certain elements stand out, such as the significant economic capacities of criminal groups, their ability to apply pressure (through threats or coercion), and the lack of

[33] Ibid., p. 20.
[34] Ibid., p. 19.
[35] Ibid., p. 17.
[36] E.B. Gómez Mérida, "El problema del nexo entre la política y los grupos criminales, dentro de la administración de justicia en Guatemala", thesis dissertation, 2014, pp. 73 and 74.

effective deterrent measures targeting judicial officers. Objective elements may vary substantially depending on the location and the socioeconomic context in question.

5. Objectives pursued through judicial corruption

65. Corruption of the judiciary extends from pretrial investigations and procedures through trial proceedings and settlements, to the enforcement of decisions by judicial or executive officers. Attempts are frequently made to corrupt the judges of criminal proceedings for a variety of reasons, including to avoid pretrial detention; to prevent the commencement of a trial or obtain its delay or conclusion; or to influence the outcome of a case, for instance by obtaining an acquittal or a lesser sentence, fine or term of imprisonment, by altering the location or type of prison involved — from maximum to minimum security — or by preventing a sentence from being applied.

66. Different actors are subject to higher risks of corruption at different stages in the process. Before a case goes to trial, lawyers and prosecutors are at risk of being exposed to political pressure and bribes seeking to convince them to manipulate the evidence and/or charges brought before the competent courts. During judicial proceedings, judges, lawyers and court clerks can be contacted to influence the ruling of a case, to expedite or delay proceedings, to drop charges or to alter the final verdict. Once proceedings have been concluded, lawyers can also be compelled not to appeal or contest a judgement. Judges, prosecutors and administrative and support staff can also be persuaded to disclose confidential information on the development of criminal investigations (corrupt court or prosecution staff members could theoretically provide information regarding ongoing investigations to suspects or defendants).

67. Finally, organized crime groups can attempt to corrupt the judiciary (often through bribes or political influence) with a view to affecting tenders or public contracts. In fact, in many countries organized crime networks include criminal enterprises that are involved in the abuse of public funds. As a result, the administrative authorities that control the legality of public contracts can become targets of organized crime.

68. A study conducted by the International Bar Association on judicial corruption shows that criminal cases are those with the highest level of perceived corruption. This may be due to the higher stakes for defendants in criminal proceedings or, to an even greater degree, in cases related to organized crime.[37]

69. When attempting to corrupt the judiciary, criminal organizations primarily seek to conceal or confer legitimacy on the criminal activities they have undertaken, either through inaction or a flawed interpretation of the law by key actors in the judicial system. The margin of discretion available to judges and prosecutors when interpreting and resolving issues that fall within their purview means that these individuals are some of the most targeted by criminal organizations.

70. One of the direct repercussions of judicial corruption is the sense of impunity that is produced and reinforced by corruption among the different actors involved in the judicial system.[38] Corruption is thus at the root of the impunity which such criminal groups may procure for themselves one way or another.

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[37] International Bar Association, *The International Bar Association Judicial Integrity Initiative*, (footnote 24 above), p. 32.

[38] M. Carbonell, "Corrupción judicial e impunidad: el caso de México", online legal library of the Institute for Juridical Research of the Autonomous University of Mexico (UNAM); available from: www.juridicas.unam.mx.

6. Factors of vulnerability, influence and mechanisms of pressure

71. Factors of vulnerability and mechanisms of pressure on the judiciary vary greatly from country to country, in relation to different geographical, cultural, institutional, historical or socioeconomic contexts (A/67/305, para. 17).

72. Like all persons, judicial officers are social individuals who have social relationships and belong to different social groups. The private dimension of their lives can encompass a wide range of social relations and group affiliations, which, without being primarily constituted for this purpose, can nonetheless influence their professional decisions. The most common means of applying pressure on judicial officers consist mainly of threats, blackmail, political influence, corruption, bribery, favours (including through nepotism and family relations) and meddling in their social and family relationships.

73. In this regard, ensuring transparency, decent working conditions, adequate remuneration, the transparent appointments of judicial personnel and continuous training, adopting codes of conduct, engaging in good governance, prevention, and public proceedings, monitoring corrupt behaviour, and controlling the assets of all actors involved in the judicial system are all practices that should be promoted in order to achieve these objectives.

IV. Components of a long-term solution

74. Article 11, paragraph 1 of the United Nations Convention against Corruption recognizes the crucial role played by the judiciary in combating corruption. The Convention also highlights the key importance of international cooperation between judicial systems for that purpose. It therefore stipulates that the judiciary must not be corrupt, and in article 11, paragraph 1, each State Party is called on to take measures to strengthen the integrity and independence of the judiciary and to prevent opportunities for corruption among members of the judiciary. One of the recommended measures is adopting a code of conduct for members of the judiciary. Article 11, paragraph 2, also recommends the elaboration and application of similar measures within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

75. According to the aforementioned study conducted by the International Bar Association, finding the optimal balance between independence and the implementation of measures to increase accountability for minor offences or offences committed by judges is a structural challenge for all judicial systems. This balance is essential to protect judges and other professionals from undue influence of any nature in the performance of their professional duties, while simultaneously promoting adequate monitoring and transparency mechanisms to ensure that judges handle the cases before them in accordance with the highest standards of independence and justice.[39]

A. Measures to enhance the integrity and independence of the judiciary

76. The imperative of preserving the integrity and independence of the judiciary was enshrined in article 14, paragraph 1, of the International Covenant on Civil and Political Rights, which stipulates that everyone shall be entitled "to a fair and public

[39] International Bar Association, *The International Bar Association Judicial Integrity Initiative*. (footnote 24 above), p. 15.

hearing by a competent, independent and impartial tribunal established by law [...]". Human Rights Committee general comment No. 32, paragraph 19, stipulates that "the requirement of competence, independence and impartiality of a tribunal [...] is an absolute right that is not subject to any exception".

77. There are a number of good practices that can be used to prevent organized crime from having an impact on the judicial system, in particular on all matters relating to judicial corruption. These measures include the following.

(a) Legislation

78. Judicial independence constitutes a prerequisite to the rule of law and a fundamental guarantee of a fair trial.[40] The core of the principle of judicial independence is the liberty of judges to rule on the cases brought before them, without interference from Governments, pressure groups or other actors.[41]

79. In accordance with the Basic Principles on the Independence of the Judiciary, States have the responsibility of guaranteeing the independence of the judiciary through national legislation.[42]

80. More than two-thirds of States worldwide have already enshrined judicial independence in their constitutions, while others have established this principle in their national legislation.[43]

(b) Physical and psychological security

81. As required by principles 1 and 2 of the Basic Principles on the Independence of the Judiciary and principle 1.1 of the Bangalore Principles of Judicial Conduct, States should provide security measures to protect the judiciary from any extraneous influences, inducements, pressures, threats or interference. These security measures, however, must not have an adverse impact on the judicial protections of citizens' rights.

82. Nonetheless, security systems should be professionally designed and rigorously maintained, lest they result in the concealment or disguise of judges' activities. While in some situations, concealment may be necessary to protect a judge's life or physical integrity, such practices should be carefully designed and implemented, since extreme options such as "faceless judges" derogate from the judicial guarantees set out in article 14 of the International Covenant on Civil and Political Rights.[44]

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[40] Bangalore Principles of Judicial Conduct (Value 1), resolution 2006/23 of the Economic and Social Council, annex.

[41] United Nations Office on Drugs and Crime, *Commentary on the Bangalore Principles of Judicial Conduct*, 2007, p. 33; available from: https://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf.

[42] Basic Principles on the Independence of the Judiciary, adopted by the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan, Italy, from 26 August to 6 September 1985, and endorsed in General Assembly resolutions 40/32 and 40/146.

[43] L. Camp Keith, "Judicial independence and human rights protection around the world", Judicature, vol. 85, No. 4 (January-February 2002), p. 198 (available from: http://www.utdallas.edu/~linda.keith/JudicatureJudicialIndependence.pdf); J. Bridge, "Constitutional Guarantees of the Independence of the Judiciary", *Electronic Journal of Comparative Law*, Vol. 11.3 (December 2007), p. 4 (available from: www.ejcl.org/113/article113-24.pdf).

[44] See, for example, Human Rights Committee, Communication No. 577/1994, *Polay Campos v. Peru* (CCPR/C/61/D/577/1994) and Communication No. 678/1996, *Gutiérrez Vivanco v. Peru* (CCPR/C/74/D/678/1996).

83. Certain States which have witnessed threats, including violent threats, against judges, report that they have introduced security measures to protect the judiciary without violating the judicial guarantees to which the public is entitled.[45]

(c) Security in the workplace

84. Security in the workplace is an essential tool to combat judicial corruption, as it is a basic means of ensuring judicial independence. This principle can be used to avoid the arbitrary transfer of judges and to ensure that judicial staff can perform their functions without fear of being replaced for reasons other than purely professional.

85. Security of tenure for judges and the length of their terms must be guaranteed by law.[46] Furthermore, it is crucial to guarantee the irremovability of judges — both those who are appointed administratively and those are elected — until the expiry of the term for which they have been appointed or elected.[47]

86. There are a number of States that elect or appoint judges for life, at least in courts of last instance and other high-level tribunals.[48]

(d) Financial security and administrative independence

87. Administrative staff must receive adequate remuneration from the State so that they can lead a life of dignity and resist the temptation to accept bribes as a means of supplementing their income. As mentioned above, it is important to promote the financial autonomy of the judiciary with regard to the other branches of Government, in order to avoid potential interference by other actors in the judicial sphere.

88. The Basic Principles on the Independence of the Judiciary recognize the importance of adequate remuneration to guarantee and promote the independence of the judiciary.[49] In addition, the Human Rights Committee, in its general comment No. 32, urges States to guarantee adequate remuneration by law and to establish clear procedures and objective criteria for the remuneration of members of the judiciary.

89. Several States have already recognized their responsibility for ensuring adequate remuneration for those performing functions within the judicial sphere, including attorney-general's offices and prosecution services under that heading.[50] Other States have made efforts to adequately increase the remuneration of judges as part of their fight against corruption.[51]

90. The judiciary must have the capacity and necessary resources to properly perform its functions without depending on other bodies (principle 7 of the Basic Principles on the Independence of the Judiciary). It is essential for countries to have sufficient economic capacity to be able to cover the cost of ongoing efforts to

[45] Honduras, Mexico.
[46] Basic Principles on the Independence of the Judiciary (see footnote 42 above), principle 11.
[47] Ibid., principle 12.
[48] Azerbaijan, Cuba, Germany, Senegal and Sweden.
[49] Basic Principles on the Independence of the Judiciary (see footnote 42 above), principle 11.
[50] Germany, Japan and Sweden.
[51] Azerbaijan, for example, has increased judicial salaries with a view to combating corruption.

modernize and enhance the judicial system.[52] To this end, States should engage in long-term planning.

91. In a 2007 study on organized crime, Jan van Dijk concludes that the impact of the criminal justice system on the fight against organized crime has been underrated.[53] With regard to major cases where the activities of an organized criminal group are being prosecuted, States should, inter alia, ensure that court facilities (in terms of location, but also of judicial staff and court interpreters) can appropriately handle major organized crime cases. Otherwise, splitting a case across several trials can hinder the participation of the defendants or witnesses providing testimony in multiple trials.[54]

(e) Education and Training

92. Principle 6.3 of the Bangalore Principles of Judicial Conduct stipulates that training courses and other facilities must be made available to judges that enable them to enhance their knowledge, skills and personal qualities. Ongoing training is essential for judges to perform their functions in an objective, impartial and competent manner and for them to be protected from inappropriate influences.[55]

93. In this regard, ethical codes of judicial conduct such as the Bangalore Principles of Judicial Conduct are fundamental for guiding judicial practice. A number of States have developed codes of ethics outlining best practices for the conduct of the judiciary.[56]

94. As mentioned above, several States have some kind of educational programme for judges, prosecutors and/or lawyers that is focused on combating corruption and strengthening ethics training amongst the judiciary.[57]

95. With the aim of providing comprehensive and effective training, it would be advisable to conduct systematic studies on vulnerabilities in the system and to share those findings during training activities. In Germany, for example, the Federal Police Service conducted an assessment of corruption in the police, the judiciary

[52] Organization for Economic Cooperation and Development, Economic Commission for Latin America and the Caribbean, the Inter-American Center of Tax Administrations and Inter-American Development Bank, *Revenue Statistics in Latin America 1990-2010* (Paris, OECD Publishing, 2017; Organization for Economic Cooperation and Development (OECD), Revenue Statistics 2016, Paris, OECD Publishing, 2016.

[53] J van Dijk, "Mafia markers: assessing organized crime and its impact upon societies", *Trends in Organized Crime*, Vol. 10, No. 4 (December 2007), p. 47, cited in T. Feltes and R. Hofmann, "Transnational Organized Crime and its Impacts on States and Societies", in P. Hauck and S. Peterke (eds.), *International Law and Transnational Organized Crime*, Oxford University Press, 2016.

[54] Best practice surveys of the Council of Europe. Reports by Committee of Experts on Criminal Law and Criminological Aspects of Organised Crime (1997-2000) and the Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime (2000-2003), p. 195.

[55] United Nations Office on Drugs and Crime, *Commentary on the Bangalore Principles of Judicial Conduct* (footnote 41 above), para. 200.

[56] According to country responses, 7 of the 16 States have a code of ethics for judges, 3 have a code for lawyers and 3 have a code for prosecutors.

[57] Azerbaijan, Bosnia and Herzegovina, El Salvador, Germany, Japan, Montenegro, Sweden and Turkey. For example, in Germany, the Judicial Academy offers educational programmes on the topic of judicial independence and ethics. Between 2009 and 2013, a total of 766 judges and prosecutors participated in these programmes. Similarly, the Council of Europe offers an educational programme in Montenegro to train the judiciary on the subject of corruption and ethics.

and the public prosecutor's office, inter alia, through both public and confidential surveys and questionnaires.[58]

96. With regard to criminal proceedings dealing with organized criminal activities, States should ensure that staff members with the appropriate expertise and psychological resilience are available to deal with organized crime trials. With regard to organized crime cases, it may be advisable for competence to be attributed to courts of high instance, as these usually employ judges with more experience.[59] Caution should nonetheless be exercised when establishing specialized courts to try specific cases. In *Kavanagh v. Ireland*, the Human Rights Committee ruled that Ireland had not reasonably and objectively justified its decision to try a member of a criminal group in a special court, thus finding that the right to equality before the law had been violated (article 26 of the International Covenant on Civil and Political Rights).[60] Before the Committee, Ireland had argued that it had established a special court on account of the risk that the defendant's membership in a criminal organization could serve to intimidate jurors or witnesses.[61]

B. Measures to prevent opportunities for corruption among members of the judiciary (accountability)

97. The judiciary must be governed by principles of transparency and accountability to ensure that all judicial decisions are taken in an impartial, independent and corruption-free manner.[62] A number of measures have been taken to highlight the transparency of judicial processes and accountability for violations of fundamental rights and standards of conduct:

(a) Discipline, suspension and removal

98. Judicial independence must be reconciled with the need to file a complaint against and, where appropriate, hold accountable and punish judges, prosecutors and other public officials found to be abusing their office. In accordance with the Basic Principles on the Independence of the Judiciary (principles 17-20), it may be appropriate to take various forms of action: disciplinary measures, suspension or, ultimately, removal from office, depending on the gravity of the conduct in question. Dismissal is an exceptional measure that can be taken only if there are serious grounds that disqualify the judge from continuing to exercise his or her profession.[63]

99. Certain countries have conducted non-criminal disciplinary proceedings in response to allegations of corruption. These proceedings have culminated in the adoption of various measures, including dismissal, transfer and/or change in the category of judges or other officials linked to acts of corruption.[64]

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[58] Best practice surveys of the Council of Europe. Reports by Committee of Experts on Criminal Law and Criminological Aspects of Organised Crime (1997-2000) and the Group of Specialists on Criminal Law and Criminological Aspects of Organised Crime (2000-2003), p. 195.

[59] Ibid.

[60] Human Rights Committee, Communication No. 819/1998, *Kavanagh v. Ireland*, Views adopted on 4 April 2001 (CCPR/C/71/D/819/1998).

[61] Ibid., para. 8.3.

[62] International Commission of Jurists, Judicial accountability, Geneva, 2016, p. 15.

[63] Among others, refer to paragraph 19 of General Comment No. 32 of the Human Rights Committee.

[64] According to responses from States, Azerbaijan, Bosnia and Herzegovina and El Salvador have conducted corruption-related disciplinary proceedings against judges and/or prosecutors (32 judges in Azerbaijan, one prosecutor in Bosnia and Herzegovina and three judges in El Salvador).

100. However, according to article 11, paragraph 1, of the United Nations Convention against Corruption such measures cannot be taken in a manner that undermines the independence of the judiciary. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure (principle 17 of the Basic Principles on the Independence of the Judiciary), in accordance with established standards (principle 19) and will be subject to an independent review (principle 20). In the case of *Mundyo Busyo et al.* (68 judges) *v. the Democratic Republic of the Congo*, the Human Rights Committee stated that the dismissal of judges on charges of corruption, immorality and incompetence did not respect the established procedures and safeguards, both national and international, for dismissal. Consequently, the Committee considers that those dismissals constitute an attack on the independence of the judiciary protected by article 14, paragraph 1, of the Covenant.[65]

(b) Criminal responsibility

101. Although judges should in principle be immune from criminal proceedings in relation to the content of their orders and judgments, judges should remain liable for ordinary crimes not related to their judicial capacity.[66] In this regard, article 30, paragraph 1 of the United Nations Convention against Corruption establishes an obligation to criminalize the commission of offences specified therein, depending on their gravity.

102. As has been described above, the contributions received from States for the present report contain accounts of judges being punished in corruption-related cases and of criminal investigations of corruption in the judiciary being launched or expanded. For example, since 2015, the Office of the Attorney-General of Guatemala has made significant efforts to combat corruption and investigated a number of judges and other officials, revealing the existence of a vast criminal network involving various public officials.[67] In total, 21 criminal investigations were pursued. As a result, charges were brought against 184 civil servants, including elected Government officials, ministers of State and judges.[68] Furthermore, Hungary has established a specialized anti-corruption unit within the Office of the Prosecutor.

103. However, accountability for corruption remains limited. Only four of the countries that submitted a response for inclusion in the present report stated that there had been cases of corruption, even though more than 10 of them have criminal laws and/or mechanisms that penalize judges and lawyers or disciplinary proceedings.[69]

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[65] Human Rights Committee, Communication No. 933/2000, *Mundyo Busyo et al v. the Democratic Republic of the Congo* (CCPR/C/78/D/933/2000).

[66] International Commission of Jurists, Judicial accountability (note 62 above), p. 28.

[67] See the annual report of the United Nations High Commissioner for Human Rights on the activities of his Office in Guatemala (A/HRC/31/3/Add.1), paras. 3 to 5.

[68] International Commission against Impunity in Guatemala, interview with the Commissioner, Iván Velásquez Gómez, 6 June 2016 (available from: www.cicig.org/index.php?Page=NOT_051_20160606).

[69] For example, in its response for the present report, Honduras provided information on the existence of a number of laws governing the conduct of the judiciary, but failed to report specific cases of corruption. However, according to a reply received from the Association of Judges for Democracy, there have been several instances of corruption associated with the judiciary in Honduras, especially following the 2009 coup, which should be investigated.

(c) Access to effective remedies and reparation for victims

104. Under article 2, paragraph 3, of the International Covenant on Civil and Political Rights, States recognize the right of any person whose rights or freedoms as recognized in the Covenant are violated to have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.[70] This legal remedy may take the form of restitution, compensation, rehabilitation, satisfaction and/or guarantees of non-repetition (Basic Principles and Guidelines on the Right to a Remedy and Reparation).[71] In particular, article 35 of the United Nations Convention against Corruption provides that a legal remedy must be granted to persons who have suffered damage as a result of an act of corruption in order to obtain prompt and adequate compensation.

105. In organized crime cases in which a large number of people have been affected, specific legislative mechanisms and funds could be set up to ensure effective remedy. Where appropriate, national laws could stipulate that assets recovered in operations to dismantle organized crime groups should be designated to ensure effective reparation for victims. Furthermore, in cases of such forms of organized crime as trafficking in persons, psychological and social support mechanisms should be established for victims and their environments in order to prevent their secondary victimization.

(d) Right to truth

106. Victims also have the right to obtain detailed information on available resources and, where applicable, on the progress of judicial proceedings, as well as the right to verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations (para. 22 (b)) of the above mentioned Basic Principles and Guidelines on the Right to a Remedy and Reparation).

V. Conclusions and recommendations

A. Conclusions

107. **Efforts to directly combat the influence of organized crime and drug trafficking within the judicial system are guided by the need to strengthen the democratic State and ensure rigorous respect for the legal system and the highest values and principles that inform it, and by the duty to ensure the optimal functioning of the justice system.**[72]

108. **An upright, effective and independent judiciary is needed to ensure that human rights and fundamental freedoms are protected and respected. The**

[70] This right is recognized by various international and regional treaties and declarations: Universal Declaration of Human Rights, article 8; American Convention on Human Rights, articles 25 and 63, paragraph 1; African Charter on Human and Peoples' Rights, article 7, paragraph 1 (a); Arab Charter on Human Rights, articles 12 and 13; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) article 5, paragraphs 4, 13 and 41.

[71] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in its resolution 60/147.

[72] Republic of Costa Rica, Judiciary, Secretariat-General of the Court, Extraordinary Session of the Plenary Court, Act No. 041 of 25 August 2014 (see footnote 15 above), p. 226.

challenges posed by organized crime, whether national or transnational, can only be addressed through a system based on those principles. Corruption in the judiciary deprives citizens of that protection, jeopardizing respect for human rights.

109. Owing to the structure and characteristics of organized crime, international coordination is essential in combating judicial corruption caused by criminal organizations. Without dismissing national institutional capacities operating in isolation, it is clearly easier and more efficient to combat systematic conduct that has international ramifications if the international community as a whole is able to articulate a set of coordinated policies and strategies with a view to addressing underlying threats. International cooperation is an excellent way to gather knowledge, exchange experiences and allocate resources, activities clearly provided for by the United Nations Convention against Corruption. The interest in using political power to control the judiciary is a pressing problem, as it undermines the principle of judicial independence and impairs the judicial system's capacity to act when confronted with powerful networks of corruption and crime. This can occur in any country, whatever its economic situation or degree of democratic consolidation. The subtlety of the approach used to achieve the goal of influencing judicial decisions is what makes the difference.

110. The judicial system is one of the most important and complex institutions to modernize and reform. This is not only because it is directly responsible for protecting human rights and strengthening the rule of law, but also because its reform can be interpreted as an attack on its independence. Striking a balance between judicial independence and the responsibilities that are integral to the role of the judiciary poses a structural challenge.

111. Continuous education and training are key, not only to achieve a high degree of integrity, competence and diligence among judges, but also to educate members of the public at large about their rights and what they should expect from an effective and independent judiciary based on human rights, democracy and the rule of law.

112. This report has explored aspects of the impact of organized crime on judicial corruption with a view to laying the foundations and encouraging future debate. First, the Special Rapporteur has identified three main elements that characterize organized crime: (a) the activities are carried out over a sustained period of time; (b) the organizations have an identifiable structure and hierarchy; and (c) serious offences are committed, in particular using violence and corruption for material gain.

113. Secondly, this report has paid particular attention to the impact of organized crime on the judicial system. The Special Rapporteur has highlighted the challenge that judicial systems face in judicial corruption, as the judiciary remains a preferred target for interference by criminal networks seeking to extend their influence on State institutions and create spheres of immunity and impunity.

114. Furthermore, the report has identified that the types of corruption that most often affect judiciaries are political interference in judicial processes by either the executive or legislative branches of Government, bribery or extortion, along with tendencies to employ violent means.

115. All actors in the justice system may be among those targeted by criminal organizations accustomed to corrupt transactions at every stage of the judicial process, from the investigation of facts to the final review of judgments.

116. **Finally, the report identifies a number of good practices that can be used to prevent organized crime from having an impact on the judicial system, encompassing both measures to strengthen the independence of the judiciary (through legislation, safety in the workplace, financial security, administrative independence, physical and psychological security, training and capacity-building) and measures to prevent opportunities for corruption (disciplinary and criminal measures, as well as access to effective remedies, reparation and the victims' right to truth).**

B. Recommendations

117. **States should undertake studies as well as continuous, rigorous assessment of the causes and consequences of corruption in order to assess what is needed to combat and prevent organized crime, and possibly carry out institutional reforms of their judicial systems, which should include increasing human resources and capacity, streamlining judicial processes and clarifying the jurisdiction of institutions, as well as strengthening the powers of judges and prosecutors.**

118. **States should promote a comprehensive response, which should be significantly enhanced and made more effective through international cooperation. It is imperative that the problems be addressed in an integrated manner, taking into account not only judicial variables, but also social and cultural ones.**

119. **States should strengthen and facilitate implementation of judges' and prosecutors' strategies and activities designed to initiate and put into effect all the measures for international cooperation with judges and prosecutors of other countries set out in the United Nations Convention against Corruption, in particular the provisions of article 43 et seq. thereof.**

120. **States should adopt domestic legislation and preventive measures that guarantee the independence of the judiciary, including through constitutions or other national legislation that penalize infringements on that independence.**

121. **States should guarantee the tenure of judges, both those appointed by administrative decisions and those elected, until they reach retirement age or until the expiry of the period for which they are appointed or elected, as is established by principle 12 of the Basic Principles on the Independence of the Judiciary.**

122. **States should ensure that the assignment of cases to judges within the courts to which they belong is an internal matter, handled exclusively by the judicial administration.**

123. **States should legally guarantee adequate remuneration for members of the judicial system, in addition to establishing clear procedures and criteria for the remuneration of members of the judiciary, as well as administrative and auxiliary staff.**

124. **States should guarantee that there are adequate resources to enable personnel of the judicial system to carry out their functions independently and with continuity, taking into account the particular requirements of complex trials pertaining to the activities of organized criminal groups.**

125. **States should design and implement appropriate protection and security measures to ensure that judicial personnel carry out their functions under the conditions most conducive to their physical and psychological security.**

126. **States should ensure that personnel involved in the administration of justice receive continuing education in areas such as preventing and combating corruption, which may include ongoing training throughout their careers, as well as training sessions on specific, defined topics related to respect for human rights or combating corruption, the development of codes of ethics that establish basic principles of judicial independence, and good practices in combating corruption.**